

**DEC 12 2005**

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

ARTURO CAZAREZ LOPEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 03-71102

Agency No. A79-520-341

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted December 5, 2005\*\*

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Arturo Cazarez Lopez, a native and citizen of Mexico, petitions for review  
of the Board of Immigration Appeals' ("BIA") order summarily affirming an

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\* This disposition is not appropriate for publication and may not be cited to or  
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral  
argument. See Fed. R. App. P. 34(a)(2).

immigration judge's ("IJ") order denying his motion to reopen proceedings in which he was removed in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion, *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (2005), and we deny the petition for review in part and dismiss it in part.

The IJ did not abuse her discretion in denying Lopez's motion to reopen because the record indicates that Lopez's hearing notice was mailed to his address of record and he did not provide a sworn affidavit containing information to rebut the presumption of delivery created by regular mail. *See* 8 U.S.C. § 1229(a)(1); *Salta v. INS*, 314 F.3d 1076, 1079 (9th Cir. 2002) (holding that a sworn affidavit that neither the alien nor another responsible party residing at his address received the notice will generally rebut the presumption of delivery created by regular mail).

Lopez's contention that the BIA erred by failing to state reasons for its decision is foreclosed by *Falcon Carriche v. Ashcroft*, 350 F.3d. 845, 851-52 (9th Cir. 2003).

We do not consider Lopez's contention that his former counsel provided ineffective assistance because he failed to raise this argument in his motion to

reopen or in his notice of appeal to the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

**PETITION FOR REVIEW DENIED in part and DISMISSED in part.**